

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant, v. Otilio Franco, aka Cruz Leyva, Individually and d/b/a Cruz Leyva Construction, Respondent; 8 USC 1324a Proceeding; Case No. 88100176.

**ORDER GRANTING COMPLAINANT'S MOTION, DEEMING ADMITTED, AND COMPELLING
RESPONSES TO INTERROGATORIES**

Presented to me for ruling is the Complainant's July 21, 1989 motion that I deem as admitted the Complainant's requested, and unanswered, admissions of January 10, 1989, and that I enter an order compelling responses to Complainant's interrogatories, which were also served on Respondent on January 10, 1989. I grant the Complainant's motion.

On November 3, 1988 Complainant, the Immigration and Naturalization Service (INS), filed a complaint (8 USC 1324a Proceeding) with the office of the Chief Administrative Hearing Officer (OCAHO) against Otilio Franco, aka Cruz Leyva, Individually and d/b/a Cruz Leyva Construction, hereinafter referred to as Respondent or Franco. OCAHO docketed the complaint as Case No. 88100176 and served it, with a Notice of Hearing dated November 16, 1988, on Respondent. On or about December 3, 1988 Respondent Franco filed his answer to the Complaint generally denying the allegations therein and contesting the jurisdiction of the Chief Administrative Hearing Officer on the basis that no violation of 8 U.S.C. 1324a had occurred. On January 19, 1989 I entered an order postponing the February 21, 1989 hearing date indefinitely because of scheduling conflicts. In the order I requested that counsel announce ready for trial once discovery was completed and all settlement efforts had been exhausted.

On January 10, 1989 Complainant mailed to Respondent written interrogatories (pursuant to 28 CFR 68.15) and a request for admissions (pursuant to 28 CFR 68.17). The interrogatories are 24 in number, with some containing subsets. The request for admissions seeks 15 numbered admissions. An additional set of copies of the

January 10, 1989 interrogatories was mailed to Respondent on March 31, 1989 and received (as noted by the receipt signature of Respondent's agent) on May 3, 1989 as indicated by Exhibit ``D'' (return receipt) attached to Complainant's motion.

Under the applicable rule, Respondent had 30 days within which to mail his answers or objections to the interrogatories. 28 CFR 68.15(b). He had 30 days after service of the request for admissions to mail his objections to the request or admit or deny the requested admissions. 28 CFR 68.17(b). Complainant's discovery was served when mailed on January 10, 1989. 28 CFR 68.5(d)(1). Respondent's deadline for mailing his responses, objections, admissions, or denials was February 14, 1989--30 days plus the 5-day grace period granted by 28 CFR 68.5(d)(2).

As I described in the initial paragraph, by motion dated July 21, 1989 the Complainant requests an order deeming and compelling. Under the applicable rules, 28 CFR 68.7(b) and 68.4(d)(2), Respondent had 15 days in which to mail an answer to Complainant's motion. With the additional grace time granted until the next business day by 28 CFR 68.5(a), Respondent had until Monday, August 7, 1989 to mail his answer. Respondent Franco has not filed any answer to Complainant's motion of July 21, 1989. More than 180 days have elapsed since the Complainant served its January 10, 1989 interrogatories and requested admissions, yet Respondent Franco has not filed any responses or objections to Complainant's discovery documents. I now must decide the appropriate action. ACCORDINGLY,

I GRANT the Complainant's July 21, 1989 motion and I DEEM AS ADMITTED each of Complainant's 15 requested admissions of January 10, 1989. 28 CFR 68.17(b).

I ALSO ORDER Respondent Franco to serve his responses to Complainant's 24 interrogatories of January 10, 1989 within 9 days from the date of this order. (28 CFR 68.5(d)(2) automatically grants an additional 5 days.)

SO ORDERED: At Atlanta, Georgia this August 14, 1989.

RICHARD J. LINTON
Administrative Law Judge